

PT 97-63

Tax Type: PROPERTY TAX

Issue: Government Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

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| ILLINOIS DEPARTMENT |) | Docket # | 95-16-0716 |
| OF CENTRAL MANAGEMENT SERVICES |) | | |
| Applicant |) | Parcel Index #s | |
| |) | 16-35-403-003-000 | |
| |) | 16-35-403-007-000 | |
| v. |) | 16-35-403-008-000 | |
| |) | 16-35-403-009-000 | |
| |) | 16-35-403-043-000 | |
| THE DEPARTMENT OF REVENUE |) | 16-35-403-044-000 | |
| OF THE STATE OF ILLINOIS |) | 16-35-403-046-000 | |

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. John Brazaitis, Technical Advisor for the Bureau of Property Management of the Illinois Department of Central Management Services.

Synopsis:

The hearing in this matter was held at the Illinois Department of Revenue, Chicago, Illinois, on August 1, 1997, to determine whether or not Cook County Parcel Index Nos. 16-35-403-003-000, 16-35-403-007-000, 16-35-403-008-000, 16-35-403-009-000, 16-35-403-043-000, 16-35-403-044-000, and 16-35-403-046-000 qualified for a property tax exemption during the 1995 assessment year.

John Brazaitis, Technical Advisor for the Bureau of Property Management of the Illinois Department of Central Management Services

was present on behalf of the Illinois Department of Central Management Services (hereinafter referred to as the "Applicant").

The issue in this matter is whether the applicant was purchasing the parcels at issue under an installment contract during the 1995 assessment year. Following the submission of all the evidence and a review of the record, it is determined that the applicant was not, for tax exemption purposes, purchasing the parcels at issue under an installment contract. It is therefore determined that these parcels did not qualify for a property tax exemption for the 1995 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (herein after referred to as the "Department"), that Cook County Parcel Index Numbers 16-35-403-003-000, 16-35-403-007-000, 16-35-403-008-000, 16-35-403-009-000, 16-35-403-043-000, 16-35-403-044-000, and 16-35-403-046-000 did not qualify for real estate tax exemptions for the 1995 assessment year, was established by the admission into evidence of Department's Exhibit Nos. 1 through 4.

2. On May 6, 1996, the Department received, from the Cook County Board of Appeals, a Federal/State Agency application for property tax exemption for the applicant for the parcels herein question. The Board of Appeals recommended that the exemption be denied based upon the fact that at a "hearing 3/28/96[,] John Brazaitis state leases only; option to purchase for one dollar does not create an installment purchase." (Dept. Grp. Ex. No. 1)

3. On July 25, 1996, the Department denied the requested exemption finding that the property was not in exempt ownership. (Dept. Ex. No. 2)

4. The property at issue consists of approximately 127,273 square feet of warehouse space that is located at 3721 South St. Louis Avenue in Chicago, Illinois. The property is being used by the Illinois Department of Public Aid. (Dept. Grp. Ex. No. 1; Tr. p. 11)

5. The Illinois Department of Central Management Services entered into an agreement entitled "Real Estate Lease Form" with J.D. Doyle and Associates, Inc. on May 25, 1993, for the subject property. The lease was for a total of \$2,176,368.36 for the term of the lease, with monthly payments of \$35,530.38. The term of the lease was from July 1, 1993, until June 30, 1998. (Dept. Grp. Ex. No. 1 pp. 11-56)

6. The lease is for the use of the Department of Public Aid as space for personnel, special facilities, and storage. The exterior programmed space includes a loading dock area contiguous with the warehouse building. (Dept. Grp. Ex. 1 p. 28)

7. J. D. Doyle and Associates, Inc. are contract purchasers of the subject property under terms of a written agreement dated January 19, 1993, with Stanford Marks, "Beneficiary of land trust known as American National Bank and Trust Co. of Chicago, as Trustee, U/T #115755-03, dated July 10, 1992." J. D. Doyle is an Illinois corporation with two shareholders, each of whom own 50%. (Dept. Grp. Ex. No. 1 pp. 16, 59)

8. The lease contains a tax clause at Exhibit B that states:

TAXES: Beginning with the first lease year and each year thereafter, Lessee shall pay additional rental equal to the

increase for the Lessee's proportionate share in the cost of real estate tax for the base year.* The base year shall be defined (for purposes of this article) as the tax for the year 1993 payable in 1994. The Lessee's proportionate share is defined as that portion of the net assignable space leased by the Lessee compared to the total amount of the net assignable space. Tenant's proportionate share of the building is 100%.

Lessor shall submit to the Department of Central Management Services, Lessee, a written request for additional rental due under this article within 60 days after receipt of the tax bill for reimbursement for the second installment of the taxes due on said property for each lease year. Said request for reimbursement must include copies of actual tax billings for both the base year and the current year supporting the amount requested.

* including its prorata share of the tax consultant fee should a reduction in taxes be received, not to exceed one-half of the first year prorata tax savings. (Dept. Grp. Ex. No. 1 p. 22)

9. The applicant agrees that the document executed May 25, 1993, is in fact a lease. (Tr. p. 11)

10. Amendment to lease number 1 was executed on March 1, 1994, due to the need by the Department of Public Aid for the addition of a mailroom and printshop on the premises. (Dept. Grp. Ex. No. 1 p. 61)

11. Amendment to lease number 2 was executed on April 27, 1994, to establish a renewal option for an additional five year period. (Dept. Ex. Grp. No. 1 p. 73)

12. The applicant executed amendment number 3 to the lease agreement on October 21, 1994. The amendment was necessary because the Lessor and Lessee wished to: 1) extend the renewal option for 5 additional years; 2) reduce the overall cost of the facility to the State; 3) grant the Lessee an option to purchase and receive option credits; and 4) assign the lease payments to a facility management firm. (Dept. Grp. Ex. No. 1 p. 78)

13. The amendment was also necessary to accomplish the desire of the Lessor to clarify the conditions under which the Lessee's options to renew the lease would be exercised. The amendment set out a payment schedule that defined the purchase options. The amendment also set forth the portion of each payment allocated to interest on the loan that the Lessor would use to finance the property and give the Lessee the unconditional rights to purchase the premises. (Dept. Grp. Ex. No. 1 p. 78)

14. Another purpose of the amendment was to state that "CMS has the sole discretion to decide that the exercising of the renewal or purchase options are in the best interest of the State and its employees." (Dept. Grp. Ex. No. 1 p. 78)

15. Pursuant to the amendment, the lessor and lessee agree that:

1. The renewal and purchase option will be established as follows:

The lessee shall have the option to renew the lease for a further period of five (5) [years] or any portion of such period . . .

2. The renewal price for such option will be the same rate for year 11 of the lease as for year 10 and will increase at a rate of 2% per year thereafter. Providing all payments are made under this renewal option, the State will have the option to purchase the facility together with all improvements for the price of one dollar (\$1.00).

3. Lessor agrees to reduce the rent for the facility by 5% for the entire 15 year period . . . In addition, Lessor agrees to reduce the rent by \$41,000.00 per year, the amount of the estimated property taxes for the base year of the Lease. . . .

4. Lessee agrees to exercise each renewal option providing that the Illinois Department of Public Aid is able to satisfactorily demonstrate to CMS that the facility is still needed and that the renewal of the Lease is in the best interest of the State and its employees. . . .

6. Exhibit B to the Lease is deleted in its entirety and replaced by the following:

TAXES

A. Lessee shall be responsible for the timely payment and discharge of all license or registration fees, assessments, sales and use taxes, rental taxes, gross receipt taxes, personal property taxes and other taxes now or hereafter imposed by and federal, state or local government upon the Property or upon the ownership, leasing, purchase, possession or use thereof (whether the same be assessed to the Lessor or Lessee). Lessor shall notify Lessee of any such taxes on assessments. . . . Lessee, upon notice to Lessor, may, in Lessee's own name and Lessee's expense contest or protest any such taxes, and Lessor shall honor any such notice. . . . (Dept. Grp. Ex. No. 1 p. 79-80)

16. The amendment, at Exhibit C3 - Rental Payment and Purchase Option Schedule, lists the amounts of the payments, interest due, and whether the purchase option is available at the time of a specified payment number. The first purchase option is available at payment number 120 for the amount of \$1,406,946.86. The next purchase option is available at payment 132 for \$1,171,951.87. Additional purchase options are available at payment numbers 144, 156, and 168. At payment 180, the amount of the purchase option is \$00.00. (Dept. Grp. Ex. No. 1 pp. 82-85)

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to the enabling clause of the Constitution, the legislature has statutorily granted exemptions to various entities. At issue is the exemption found at 35 **ILCS** 200/15-80 which states:

All property that is being purchased by a governmental body under an installment contract pursuant to statutory authority and used exclusively for the public purposes of the governmental body is exempt, except such property as the governmental body has permitted or may be permitted to be taxed.

In the question of exemption for the parcel at issue, the applicant asserts that the lease executed on May 25, 1993, and subsequently changed by amendment number 3, is in fact an installment contract and therefore qualifies for an exemption pursuant to the aforementioned statutory provision.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex. rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing

the right to the exemption is on the one who claims the exemption.
MacMurray College v. Wright, 38 Ill.2d 272 (1967)

The lease at issue is a lease with an option to purchase the property at certain times. "In such contracts two elements exist, an offer to sell which does not become a contract until accepted, and a contract to leave the offer open for a specified time." Bonde v. Weber, 6 Ill.2d 365, 374 (1955) An option to purchase is not the same thing as installment contract.

An installment contract is defined as:

any contract or agreement, including contracts for deeds, bonds for deeds or any other sale or legal device, whereby a contract seller agrees to sell and a buyer agrees to buy a . . . structure, wherein the consideration for such sale is payable in installments . . . and the contract seller continues to have an interest, or security for the purchase price or otherwise in that property. Ruva v. Mente, 143 Ill.2d 257, 262 (1991)

An installment contract vests equitable title in the vendee, and therefore the property may qualify for a property tax exemption with the vendee as the equitable owner. The Illinois Appellate Court has stated that a purchaser under a contract for deed, rather than the contract vendor, is the owner of the property for purposes of exemption of the parcel for property tax purposes. Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill.App.3d 678 (1994) and Christian Action Ministry v. Department of Local Affairs, 74 Ill.2d 51 (1978)

In an lease with an option to purchase situation, such as the one at issue, the lessee only has the option to purchase the property and has no equitable ownership interest in the property.

Within the contemplation of the constitution, municipal corporations must be the owners of the property before the same can be exempted from taxation. . . . When interpreted in the light of the constitutional provision aforesaid, all of the . . . property, to be exempt, must be owned by a municipal corporation by such title that it can be said to be the property of such municipality. The People v. City of Toulon, 300 Ill. 408, 412-413 (1921)

I find that the applicant had no ownership interest in the parcels herein issue during the 1995 assessment year and that an option to purchase incorporated into a lease is not the same as an installment contract. I therefore recommend that Cook County Parcel Index Nos. 16-35-403-003-000, 16-35-403-007-000, 16-35-403-008-000, 16-35-403-009-000, 16-35-403-043-000, 16-35-403-044-000, and 16-35-403-046-000 remain on the tax rolls for the 1995 assessment year.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge

December 8, 1997